

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge awarded claimant permanent total disability benefits. The respondent and insurance carrier requested this review and have raised the following issues:

- (1) Did claimant file timely written claim for compensation and application for hearing as required by K.S.A. 44-520a and K.S.A. 44-543?
- (2) What is the nature and extent of claimant's disability?
- (3) Is claimant entitled to future medical treatment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

For the reasons expressed below, the Award of the Administrative Law Judge should be affirmed.

(1) The Appeals Board finds claimant was incapacitated from June 1982 through July 1987, when the District Court appointed a guardian and conservator for the claimant. This finding is based upon the testimony of William Logan, M.D., who is the Director of the Law and Psychiatry Department at Menniger's and board certified in general and forensic psychiatry. Dr. Logan testified that from 1982 through 1988, when the doctor last saw him, claimant experienced severe psychotic symptoms associated with paranoid schizophrenia that significantly impacted on all aspects of his functioning. Those suffering from this mental disorder typically believe others can read their thoughts and that they can broadcast and receive thoughts. They often hear voices, are preoccupied with physical symptoms, often believe objects have been implanted in them, and think other people are conspiring against them. Quite often their thought process is loose, rambling and disorganized. They go from topic to topic in a disjointed manner and do not follow logical trains of thought. They can be violent. Claimant experienced these symptoms, along with hallucinations and delusions, from June 1982 through July 1987 and after.

After the District Court appointed a guardian and conservator for claimant in July 1987, claimant's representative served written claim for workers compensation benefits upon respondent on September 29, 1987 and filed application for hearing with the Division of Workers Compensation on December 7, 1987, alleging accidental injury on February 4, May 17, and June 1, 1982.

The respondent and insurance carrier contend claimant's claim for benefits and application for hearing are untimely. Because of his incapacity, claimant contends no limitation of time and the Workers Compensation Act ran pursuant to K.S.A. 44-509. That statute provides:

"(a) In case an injured workman is an incapacitated person or a minor, or when death results from an injury in case any of his dependents, as herein defined, is an incapacitated person 'or a minor'

at the time when any right, privilege, or election accrues to him under the workmen's compensation act, his guardian or conservator may on his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in the workmen's compensation act provided for, shall run, so long as such incapacitated person or minor has no guardian or conservator."

The Appeals Board finds K.S.A. 44-509 is applicable and that claimant was incapacitated within the meaning of that statute during the period in question. Although claimant attempted to obtain legal counsel after his accidents in February, May and June 1982, as indicated above, he was unable to effectively communicate or take reasonable action to pursue his claims. Even during the period claimant was on medication and able to perform some work, claimant remained incapacitated as he was able to function at a marginal level only as indicated by Dr. Logan. The Appeals Board rejects respondent's argument that one must be incapacitated on the date of accident before incapacity will stop the running of time. The Appeals Board agrees with the analysis of the Administrative Law Judge that the Legislature intended that no period of time under the Workers Compensation Act should run when an injured worker is incapacitated whenever that incapacity occurs.

Because of this finding, the Appeals Board concludes the written claim for benefits and application for hearing were timely filed as required by K.S.A. 44-520a and K.S.A. 44-534.

(2) The Appeals Board finds claimant's mental illness was precipitated by his three accidents at work. Although it is possible claimant may have eventually developed the schizophrenia disorder regardless of his accidents, Dr. Logan does not believe it would have happened this quickly without them, if ever. As Dr. Logan explained, the situation is very similar to traumatic neurosis or traumatic stress disorder where the injury itself does not cause the disorder, but the stress from the injury does. Because of Dr. Logan's credentials and extensive contact with claimant, the Appeals Board finds his opinion of causation persuasive. Therefore, the Appeals Board also finds claimant's mental disorder is directly and causally related to his work-related accidents and claimant is entitled to workers compensation benefits for same.

Based upon Dr. Logan's testimony, the Appeals Board finds claimant has been rendered incapable of substantial and gainful employment since September 1985, when he was terminated from his last employment, and that claimant from that point was unable to engage in substantial and gainful employment and is permanently and totally disabled. Although claimant may retain the ability to perform simple mechanical work from time to time, claimant's overall ability to work is extremely limited and does not rise to the level where claimant could maintain employment.

(3) Upon proper application to the Director, the claimant may request future medical care and treatment.

(4) The Appeals Board adopts the findings and conclusions of the Administrative Law Judge that are not inconsistent with those set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge James R. Ward dated August 18, 1994, should be, and hereby is, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE in favor of claimant, Robert M. Hynson, and against the respondent, Farmland Industries, Inc., and its insurance carrier, Aetna Casualty & Surety Co., based upon an average weekly wage of \$275.13 for a 5% permanent partial impairment of the body as a whole as a result of his accidental injuries of February 4, 1982, May 17, 1982 and June 1, 1982, at the rate of \$9.17 per week, from June 1, 1982 to September 1, 1985, a period of 169.86 weeks, in the sum of \$1,557.62, and from September 1, 1985 forward until further order, for permanent total disability compensation, at the rate of \$183.43 per week, not exceeding a total award of \$100,000.00.

As of July 14, 1995, there would be due and owing to claimant the sum of \$95,998.39, payable in one lump sum, less the compensation heretofore paid. Thereafter, compensation is payable at the rate of \$183.43 per week, until further order or until the maximum liability limit of the respondent/insurance carrier is reached.

Further award is made that claimant is granted future medical treatment on proper application only.

Claimant's attorneys are granted a lien against the proceeds of this award for not more than 25%, pursuant to K.S.A. 44-536.

Reporters' fees are assessed as costs against the respondent and insurance carrier to be paid directly as follows:

Nora Lyon & Associates, Inc.	\$399.70
Hostetler & Associates, Inc.	\$136.00
Braksick Reporting Service	\$195.40
Appino & Achten Reporting Service	\$428.20
Metropolitan Court Reporters, Inc.	\$679.70
Curtis, Schloetzer, Hedberg, Foster & Associates	\$1,055.44

IT IS SO ORDERED.

Dated this ____ day of July 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael M. Jackson, Topeka, Kansas
Mark W. Works, Topeka, Kansas
Wade A. Dorothy, Lenexa, Kansas
Derek J. Shafer, Topeka, Kansas
James R. Ward, Administrative Law Judge
David A. Shufelt, Acting Director